

CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Diana Townsend	Team: Squad #7	CCRB Case #: 201409247	<input checked="" type="checkbox"/> Force	<input checked="" type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input type="checkbox"/> Abuse	<input type="checkbox"/> O.L.	<input checked="" type="checkbox"/> Injury
Incident Date(s) Thursday, 08/28/2014 2:22 AM	Location of Incident: in front of 1292 Saint Johns Place	Precinct: 77	18 Mo. SOL 2/28/2016	EO SOL 2/28/2016	
Date/Time CV Reported Fri, 08/29/2014 8:00 PM	CV Reported At: IAB	How CV Reported: Phone	Date/Time Received at CCRB Mon, 09/08/2014 11:21 AM		

Complainant/Victim	Type	Home Address

Subject Officer(s)	Shield	TaxID	Command
1. POM Tyrane Isaac	17818	941937	077 PCT
2. POM David Afanador	31730	936100	077 PCT

Witness Officer(s)	Shield No	Tax No	Cmd Name
1. POM Christophe Mastoros	14867	937041	077 PCT

Officer(s)	Allegation	Investigator Recommendation
A.POM Tyrane Isaac	Force: PO Tyrane Isaac used physical force against § 87(2)(b)	
B.POM David Afanador	Force: PO David Afanador struck § 87(2)(b) with a gun.	
C.POM David Afanador	Discourtesy: PO David Afanador acted discourteously toward § 87(2)(b)	

Case Summary

This complaint was generated on August 29, 2014, by the Internal Affairs Bureau (IAB) when they interviewed a prisoner, § 87(2)(b) who was injured in police custody (encl. 8c-8d). Immediately thereafter, the case was placed on DA hold (encl. 19a-19b). As a result, CCRB statements were not obtained from § 87(2)(b) or the subject officers. The following information was gleaned from the video footage and the original IAB report (9a-9b, 8c-8d).

On August 29, 2014 at 2:22 a.m., § 87(2)(b) fled from officers on Schenectady Avenue toward Lincoln Place, in Brooklyn. Once PO Tyrane Isaac caught up with § 87(2)(b) § 87(2)(b) stopped running in an apparent attempt to surrender. PO Isaac punched § 87(2)(b) at least one time on the left side of his face (**Allegation A**). § 87(2)(b) backed into a corner and raised his hands in the air. PO David Afanador then approached with his firearm drawn and pointed at § 87(2)(b). As § 87(2)(b) lowered himself to the ground, PO Afanador used his firearm to strike § 87(2)(b) on his mouth (**Allegation B**). § 87(2)(b) laid face up on the ground for a couple of seconds before PO Isaac punched him again in the face (**within Allegation A**). While repositioning § 87(2)(b) on his stomach to be handcuffed, PO Isaac punched § 87(2)(b) in the back of his head a third time (**within Allegation A**). PO Afanador left the location and returned shortly thereafter with a bag. PO Afanador slapped § 87(2)(b) in the face with the canvass bag (**Allegation C**).

§ 87(2)(b) was arrested, but his arrest report was then sealed and therefore unavailable to the CCRB (encl. 11a).

§ 87(2)(a) 160.50

§ 87(2)(g)

This case was originally assigned to Investigator Krista Kano. Upon her resignation, this case was reassigned to Assistant Supervisor of Investigations, Diana Murray.

Mediation, Civil and Criminal Histories

- This case was ineligible for mediation.
- On March 11, 2015, a Notice of Claim inquiry was submitted with the NYC Law Department. The results are pending and will be added to the case file upon receipt (encl. 20a).

• [§ 87(2)(b)] [§§ 86(1)(3)&(4)] [§ 87(2)(c)]

• [§ 87(2)(b)] [§§ 86(1)(3)&(4)] [§ 87(2)(c)]

Civilian and Officer CCRB Histories

- This is the first CCRB complaint filed by and involving § 87(2)(b) (encl. 7a).
- PO Isaac has been a member of the NYPD for eight years and has had two previous force allegations made against him, one of which was exonerated and the other was unsubstantiated. PO Isaac is currently under investigation for pointing and firing his firearm at a civilian in CCRB case number 201407167 (encl. 6a).
- PO Afanador has been a member of the NYPD for ten years and has eight total complaints made against him, six of which include allegations of force but none of which have been substantiated (encl. 5a-5b). According to the NY Daily News, PO Afanador was sued for strip-searching and using force against a civilian in 2008. The city settled the claim. In 2011, the city also settled a claim that PO Afanador falsely arrested and tackled a civilian (encl. 1a-1c).

Finding and Recommendations

Allegations Not Pleaded

- § 87(2)(g) [REDACTED]
- § 87(2)(g) [REDACTED]

Explanation of Subject Officer Identification

- The IAB log identified PO Isaac as the officer who initially punched § 87(2)(b) and the video footage depicted a black male officer punching § 87(2)(b) (encl. 8c-8d, 9a-9b). § 87(2)(g) [REDACTED]
- PO Afanador was identified as the officer who struck § 87(2)(b) in the face with a firearm via § 87(2)(a) 160.50 (encl. 17a-17d). The video depicted the same officer slapping § 87(2)(b) with a bag. § 87(2)(g) [REDACTED]

Recommendations

Allegation A – Force – PO Tyrane Isaac used physical force against § 87(2)(b)

Allegation B – Force – PO David Afanador struck § 87(2)(b) with a gun.

On the video, it appears that § 87(2)(b) initially fled from the officers, but eventually stopped running in an apparent attempt to surrender. The video footage depicts PO Isaac repeatedly punching § 87(2)(b) on his head and face, first when § 87(2)(b) stopped running, then when § 87(2)(b) was lying docile on the ground for seven seconds, and finally, when he was being placed on his stomach to be handcuffed (encl. 9a-9b).

In the video footage, PO Afanador is seen pointing his firearm at § 87(2)(b) then striking him in the face with the firearm. During each blow, § 87(2)(b) does not appear to be resisting arrest or attempting to escape.

During his IAB interview, § 87(2)(b) attributed his mouth injuries to being struck in the face with a firearm (encl. 8d).

Officers must always use only the minimal amount of force necessary to take into custody a resistant individual. Patrol Guide, Section 203-11 (encl. 2a-2b). The court has previously upheld that an officer's use of force by way of striking a civilian in the head with the butt of a firearm is wholly gratuitous and without justification. NYPD v. Salas, OATH Index # 1090/01 (encl. 3a-3aa)¹.

§ 87(2)(g)

§ 87(2)(g)

§ 87(2)(g)

Allegation C – Discourtesy – PO David Afanador acted discourteously toward § 87(2)(b)

At the conclusion of the video, PO Afanador is seen slapping § 87(2)(b) in the face with a bag while § 87(2)(b) is lying on the ground in handcuffs (encl. 9a-9b). The black bag reportedly contained 17 bags of marijuana that § 87(2)(b) discarded while fleeing from the officers (encl. 8d).

Officers must always be courteous and respectful when interacting with members of the public. Patrol Guide, Section 203-09 (encl. 4a).

§ 87(2)(g)

§ 87(2)(g)

¹ In his recommendation, Administrative Law Judge Ray Fleischhacker recommended that PO Salas be suspended without pay for 30 days as a result of him striking the civilian in the head with a firearm. Judge Fleischhacker classified this as a lenient punishment and referenced a plethora of cases in which officers were suspended for 30 days in addition to one year of probation or terminated for striking a non-resistant individual with an object (encl. 3y-3aa).

Team: Pod 7

Investigator:	_____	<u>Diana Murray</u>	_____
	Signature	Print	Date

Supervisor:	_____	_____	_____
	Title/Signature	Print	Date

Reviewer:	_____	_____	_____
	Title/Signature	Print	Date

Reviewer:	_____	_____	_____
	Title/Signature	Print	Date